



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

July 24, 2003

The Honorable Rodney Ellis
The Senate of the State of Texas
P.O. Box 12068
Austin, Texas 78711

OR2003-5111

Dear Senator Ellis:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184761.

The Office of Senator Rodney Ellis (the "senator's office") received a request for

- a list of all telephone calls placed from or received by Sen. Ellis' Houston and Austin offices from 12:00 pm on Saturday, May 10 through 12:00 pm on Monday, May 12; as well as all calls during the same time periods that were placed from or received by any cellular telephones used by Sen. Ellis or his staff that are owned by the state of Texas, have service that is paid for by the state of Texas or are used largely for state business.
- a copy of all telephone messages that were written (by hand, on computer, via email or in any other form) in Sen. Ellis' offices during the same time period.

The senator's office asserts that the personal cellular telephone numbers of members of the legislature are protected from public disclosure under section 552.117 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.117 excepts from disclosure the home telephone number of a current official who requests that this information be kept confidential under section 552.024. This office has concluded that personal cellular telephone numbers are protected under section 552.117. Open Records Decision No. 670 (2001) (personal cellular telephone number of peace officer

is confidential under section 552.117(2)). Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the senator's office may only withhold the personal cellular telephone number under section 552.117 if the official made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. The senator's office states "the members whose information is at issue here have all completed the proper election form to withhold this type of information." Furthermore, the senator's office explains that "[t]he individual members rather than the State of Texas pay for the cellular telephones." Thus, we agree that the personal cellular telephone numbers of the Texas legislators are confidential under section 552.117(1). However, one of the telephone numbers belongs to an Arkansas state senator. Section 552.117 applies only to Texas officials and public employees as non-Texas officials and employees do not have a right to make an election under section 552.024. Section 552.024 states each "employee or official of a governmental body" shall elect whether to release personal information. Gov't Code § 552.024(a). A "governmental body" is defined as various entities "in the state." *Id.* § 552.003. Thus, "governmental body" as used in section 552.024 refers to a Texas governmental body. Accordingly, an election under section 552.024 is restricted to an official of a Texas governmental body. Therefore, the Arkansas state senator's cellular telephone number is not protected under section 552.117(1) and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673- 6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.— Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal limits. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID# 184761

Enc: Submitted documents

c: Mr. Gary Susswein
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Austin American-Statesman
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(w/o enclosures)